
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Pearl River School District)	File No. SLD-206406
Pearl River, New York)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: February 25, 2002

Released: February 26, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Pearl River School District (Pearl River), Pearl River, New York, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Pearl River seeks review of SLD's denial of its Funding Year 3 application for discounts under the schools and libraries universal service mechanism.² For the reasons discussed below, we deny the Request for Review and affirm SLD's decision.

2. Under the universal service support mechanism for schools and libraries, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth its technological

¹ Letter from Ben Carosi, Pearl River Public School District, to Federal Communications Commission, filed April 30, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

needs and the services for which it seeks discounts.³ The Administrator must post the FCC Form 470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider. Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶

3. The Commission's rules allow the Administrator to implement an internal filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁷ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administration receives their applications prior to the close of the filing window.

4. In Funding Year 3, the filing window for the FCC Forms 471 closed January 19, 2000.⁹ The filing window for Funding Year 2 initially closed on April 6, 1999. Later, after it had been determined that funds were available in excess of what had been requested by applicants, the Funding Year 2 filing window was reopened, and closed again on March 31, 2000.¹⁰

5. In the Fall of 1999, River City, seeking to apply for discounts in Funding Year 2 and acting pursuant to instructions from SLD personnel, manually filed an FCC Form 470 that was assigned the Application Number 298900000285951 and posted on December 22, 1999 for Funding Year 3.¹¹ On May 12, 2000, approximately six weeks after the close of the second Funding Year 2 filing window, River City filed an FCC Form 471 electronically.¹² Although it was seeking discounts on Funding Year 2 services, it indicated that the application was for

⁴ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. § 54.507(g).

⁹ See SLD website, What's New (December 6, 1999), <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

¹⁰ See SLD web site, What's New (March, 2000), <<http://www.sl.universalservice.org/whatsnew/032000.asp#consideryr2>>.

¹¹ See Letter from Ben R. Carosi, Pearl River School District, to Schools and Libraries Division, Universal Service Administrative Company, filed October 17, 2000 (Request Letter), at 1; FCC Form 470, Pearl River Public School District, App. No. 298900000285951, filed December 22, 1999.

¹² Request Letter, at 1-2.

Funding Year 3 because this was the only Funding Year choice permitted by the on-line process at that time.¹³

6. Pearl River periodically checked with SLD to determine the status of its application, and on one of these occasions, discovered that the application was being reviewed as a Funding Year 3 application rather than a Funding Year 2 application.¹⁴ On October 13, 2000, Pearl River filed a request with SLD to have the application treated as one for Funding Year 2.¹⁵ On March 30, 2001, SLD issued a decision denying the application.¹⁶ It noted the request to treat the application as having been filed in Funding Year 2.¹⁷ It found that the application must be denied because the deadline for submitting a Funding Year 2 application was March 31, 2000 and Pearl River had not filed its application by this deadline.¹⁸ Pearl River then filed the pending Request for Review.

7. In its Request for Review, Pearl River asks that we reconsider approval of the application.¹⁹ It asserts that the instructions for filing the FCC Form 471 led it to believe that it was filing its application in a timely manner, and that in its conversations with SLD staff, the deadline for submitting a Funding Year 2 application was never disclosed.²⁰ Pearl River also asserts that New York State Education Department regulations with which it must comply forced it to substantially delay the filing of its application and that to apply the filing window would therefore be inequitable.²¹ Specifically, Pearl River states that before it could proceed with the

¹³ Request Letter, at 2.

¹⁴ Request Letter, at 2.

¹⁵ See Request Letter.

¹⁶ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ben R. Carosi, Pearl River School District, dated March 30, 2001 (Administrator's Decision on Appeal). Although the Administrator's Decision on Appeal addressed the October 13, 2000 letter as an "appeal of SLD's Year Three Funding Commitment Decision," the letter was not actually an appeal. In fact, SLD did not issue a Funding Commitment Decision on the application at the time of the October 13, 2000 request or at any time thereafter. Thus, the Administrator's Decision on Appeal was the first decision issued by SLD in connection with the pending application, not an appellate review of an earlier decision. However, we find that this procedural irregularity is not a bar to our review in the context of this case. The Administrator's Decision on Appeal, however titled, constituted a funding decision in substance. Parties are entitled to seek Commission review of both initial SLD decisions and decisions that have been subjected to further Administrator review. See Administrator's Decision on Appeal, at 1 (stating that the application is "denied in full" and that the "application cannot be considered within the second window of funding for Year 2."); see also 47 C.F.R. § 54.719. Therefore, the Administrator's Decision on Appeal is properly before us for review notwithstanding the absence of any prior SLD funding determination.

¹⁷ Administrator's Decision on Appeal, at 1.

¹⁸ *Id.*

¹⁹ Request for Review, at 1.

²⁰ *Id.*

²¹ *Id.* at 1-2.

application, it had to obtain the approval of the underlying communications project from NYSED, and that this approval was not granted until April of 2000.²²

8. After reviewing the record, we find no basis to grant relief. We find, first, that SLD correctly determined that the application was filed outside the Funding Year 2 filing window. This window closed on March 31, 2000, and the application was not filed until May 12, 2000.²³ Applicants that filed their Funding Year 2 applications after the close of the filing window did not receive funding.²⁴ Therefore, even assuming that the application should be accepted as a Funding Year 2 application, it was properly denied.²⁵ We also note that Pearl River's FCC Form 471 was filed outside of the Funding Year 3 window, which closed on January 19, 2000.²⁶

9. To the extent that Pearl River requests a waiver of the filing window deadlines, we find that this request must be denied. Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.²⁷ A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.²⁸ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.²⁹

10. Pearl River first asserts that it was not put on notice of the filing window. However, both the Funding Year 3 and Funding Year 2 filing windows were posted on SLD's web site. Pearl River also asserts that the very existence of a filing window is unfair.³⁰ The fact that applications in each year will be subject to a filing window is made plain both in

²² *Id.*

²³ See n.10, *supra*; FCC Form 471, Pearl River Public School District, filed May 12, 2000.

²⁴ *Request for Review by Flint Memorial Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.05-08-0032500001, CC Dockets No. 96-45 and 97-21, Order, DA 01-1412 (Com. Car. Bur. rel. June 13, 2001) (*Flint Memorial Library*).

²⁵ We note that, if the application were viewed as a Funding Year 3 application, it would also be denied because it was filed after January 19, 2000, the date on which the Funding Year 3 filing window closed.

²⁶ SLD web site, What's New (December 6, 1999), <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

²⁷ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

²⁸ *Northeast Cellular*, 897 F.2d at 1166.

²⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

³⁰ Request for Review, at 2.

Commission's regulations and the Program Description.³¹ Pearl River emphasizes that, it consulted with SLD several times in the course of making its application. However, in light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the ultimate responsibility of complying with all relevant rules and procedures.³² An applicant's misunderstanding of program rules provides no basis for deviating from the Commission's policy of placing on the applicant the responsibility for understanding program rules and procedures.³³

11. We also find that the administrative burdens placed on applicants by local and state regulations do not constitute good cause to waive our own requirements. To hold otherwise would leave the enforcement of the Commission's federal rules subject to state and local authority. Further, because both state regulatory burdens and the requirements of this program are known to applicants in advance, we see no inequity in requiring applicants to include sufficient time in their application process to accommodate the rules of both state and federal authorities. In addition, we find that New York schools have generally not been prevented from obtaining discounts by the requirements of New York regulations.³⁴

12. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Pearl River School District, Pearl River, New York IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

³¹ 47 C.F.R. § 54.507(c); Universal Service Fund, Program Description for the 1999-2000 Funding Year (December 1998), at 2 (providing extensive description of the "Application Window," and stating that FCC Forms 471 "must be received by the close of the window for the applications to be considered 'in the window.'").

³² *Request for Waiver by St. Jean Vianney School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.10-10-00.35700001, CC Dockets No. 96-45 and 97-21, Order, DA 01-2087, para. 5 (Com. Car. Bur. rel. September 6, 2001); *Flint Memorial*, para. 5.

³³ See, e.g., *Request for Review by Baltimore Junior Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-195870, CC Dockets No. 96-45 and 97-21, Order, DA 01-1819, para. 10 (Com. Car. Bur. rel. July 31, 2001).

³⁴ Schools and Libraries Support Mechanism, 2000 Annual Report, SLD web site, <<http://www.universalservice.org/reports/2000/default.asp>> (stating that New York applicants for discounts under the schools and libraries universal service mechanism received \$170 million in Funding Year 1, \$199 million in Funding Year 2, and \$275 million in Funding Year 3).